

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RICHARD CURRY	:	CIVIL ACTION
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	
Commissioner of the Social	:	
Security Administration	:	NO. 05-cv-02350-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

April 13, 2006

Magistrate Judge Timothy R. Rice has filed a report in this social security case, recommending that the matter be remanded to the Commissioner for further proceedings. I agree with that recommendation. Petitioner, a 60-year-old illiterate, discussed his case with lawyer number one, who asserted that he could take the case only if he could get the scheduled ALJ hearing postponed. He succeeded in getting the hearing postponed but, in the interim, was advised that petitioner had retained another lawyer. The second lawyer got the hearing postponed again, but then decided not to represent the petitioner, and so notified lawyer number one. The latter then appeared at the ALJ hearing, for the express purpose of explaining that he would not be representing petitioner, either.

The ALJ then simply asked petitioner if he had any objection to proceeding with the hearing, and the petitioner stated he had no objection. There was, however, no further inquiry, and no attempt to explain to petitioner the pros and

cons of proceeding without legal representation. The magistrate judge has recommended that this court find that petitioner did not knowingly and intelligently waive his right to be represented by counsel, and that basic fairness dictates that the case be reconsidered at the administrative level, with representation of the petitioner by counsel. I readily accept that recommendation. The ALJ hearing was perfunctory at best; the ALJ's decision misstates the evidence in several instances; the hypothetical question addressed to the vocational expert was incomplete; and the consideration of the medical records was one-sided and inadequate. Remand for *de novo* review is clearly appropriate.

An Order follows.

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ORDER

AND NOW, this 13th day of April 2006, upon consideration of the cross-motions of the parties for summary judgment, and after careful review of the Report and Recommendation of United States Magistrate Judge Timothy R. Rice, and of the entire record, IT IS HEREBY ORDERED:

1. The Report and Recommendation is APPROVED and ADOPTED.
2. Plaintiff's Motion for Summary Judgment is GRANTED to the extent the case is REMANDED for reconsideration.
3. Defendant's Motion for Summary Judgment is DENIED.
4. This matter is REMANDED to the Commissioner pursuant to the fourth sentence of 42 U.S.C. § 404(g) for further proceedings consistent with the opinion of the magistrate judge, and this opinion.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.